IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE
and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL No.1407 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01/09/2004 in W.P.No.15225 OF 2004 on the file of the High Court.)

Between:
Dr.D.N.Rao, s/o Dr.D.Bhaskara Rao,
R/o H.No.8-2-681/5, Road No.12, Banjara Hills,
Hyderabad-500 034.

..... APPELLANT

AND

1 The Mandal Revenue Officer, Bommalaramaram Mandal,
Nalgonda District.
2 The Revenue Divisional Officer, Bhongir,
Nalgonda District.

.....RESPONDENTS

Counsel for the Appellant: **Mr. M.SUDHIR KUMAR**

Counsel for the Respondents: **GP FOR REVENUE**

The Court made the following :

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ORAL JUDGMENT:

On receipt of notice dated 9-8-2004 issued by the Mandal Revenue Officer, Bhommalaramaram, Nalgonda district, the petitioner straightaway filed the writ petition with the prayer to declare the action of the Mandal Revenue Officer in issuing notice under Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act,1977 (A.P.Act 7 of 1977) as illegal, arbitrary and without jurisdiction and direct respondents not to interfere with the possession and enjoyment of the petitioner and his son over the land to an extent of Ac.48.37 gts in Survey No.124 of Malyala Village, Bommalaramaram Mandal, Nalgonda district.

Writ Petition was dismissed by learned single Judge by the Order impugned in the Writ Appeal reserving liberty to the petitioner-appellant to participate in the enquiry before the Mandal Revenue Officer after filing objections with a direction that in case the Mandal Revenue Officer would come to the conclusion that issuance of notice under Section 3 of the Act is not warranted and the land is patta land, Mandal Revenue Officer would drop proceedings; otherwise, in case hecomes to the conclusion that the land purchased is different, he can proceed with the matter in accordance with law.

Learned counsel for the appellant submits that the order of learned single Judge is liable to be set aside and the notice issued by Mandal Revenue Officer asking the petitioner-appellant to show cause as to why he should not be evicted from the land in question is liable to be quashed, since the land is not an assigned land and for that reason, Mandal Revenue Officer has no authority and jurisdiction to issue such

notice.

Learned counsel for the appellant has placed reliance upon the decisions of the Supreme Court in **MADHYA PRADESH INDUSTRIES LTD. V. INCOME-TAX OFFICER**[1], **STATE OF MADHYA PRADESH v. D.K. JADAV**[2], **RAZA TEXTILES LTD. V. I.T.OFFICER, RAMPUR**[3] and **RADHESHYAM DUBE V. DISTRICT INSPECTOR OF SCHOOLS**[4]**.** Relying on these decisions, learned counsel submits that even at the stage of issuance of show cause notice, appellant is justified in approaching this Court seeking to quash the show cause notice on the ground that Mandal Revenue Officer had no jurisdiction to issue such notice. Notice had been issued on assuming facts that it was an assigned land, whereas the land in question was not an assigned land. Mandal Revenue Officer had also no authority or jurisdiction to take a decision on the question whether the land is an assigned land or not. Therefore, the impugned notice having been issued by an authority which had no jurisdiction to adjudicate upon it, is liable to be quashed. In such like situation, appellant cannot be relegated to the same authority and subjecting him to such authority would amount to causing great injustice, since the authority was already prejudiced against appellant.

Learned single Judge noticed the gist of the submissions and observed that a party in a writ petition under Article 226 of the Constitution of India by raising the point must plead and annex to the petition not only the facts, but also evidence in proof of the facts. But, with vague pleadings, the Court is not expected to draw inferences merely on pleadings and the petitioner is unable to explain how he was put in possession of Ac.48.37 guntas, when the land covered under the Order passed by the Sub-Collector, Bhongir dated 22-1-1986 reflects only Ac.41.31 gts. Learned single Judge also observed that on issuance of show cause notice, petitioner must appear before the

concerned authority and put material before him to satisfy that the land covered by the notice is not assigned land, but patta land and in case that be the position, the authority on such basis, would definitely proceed to drop the proceedings.

We have given our due consideration to the submissions made by the learned counsel for the appellant. The Judgments relied upon by the learned counsel would not make out a proposition that as and when a show cause notice was issued, the same can be challenged before a writ court on the question of lack of jurisdiction on the basis of some material, which the writ petitioner has not yet placed before the concerned authority. In other words, what the learned counsel for the petitioner-appellant would like to urge is that relying upon the material, which he filed along with the writ petition, the conclusion to be drawn is that land in question is not assigned land, but is patta land. On that basis, he would urge that Mandal Revenue Officer had no jurisdiction to issue the show cause notice.

In **MADHYA PRADESH INDUSTRIES LTD. V. INCOME-TAX OFFICER** (1 supra), the notice issued under Section 34(1)(a) of the Income-Tax Act was challenged in a writ petition under Article 226 of the Constitution on the ground of lack of jurisdiction. Writ Petition was filed on the ground that notice was issued in colourable exercise of power and Income-Tax Officer has no jurisdiction to issue such notice, since he had not recorded anything which would enable him to believe that income, profits or gains had been under assessed and such under-assessment was due to non-disclosure of material facts by the assessee. Jurisdiction of Income Tax Officer would arise when he has reason to believe that by reason of omission or failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment, income of the assessee has escaped or has been under assessed, and when the party claiming relief challenges on oath the existence of the conditions, which confer jurisdiction and sets out facts which may, unless disproved, support his case, an order dismissing his

petition *in limine* may not be properly be made. While holding so, the Court observed as under:

> "We may hasten to observe that we are not seeking to lay down any rigid rule about the nature or quantum of enquiry, which the High Court in a petition which seeks to challenge the issue of a notice under Section 34(I)(a) of the Indian Income-Tax Act may make. If the petition, on the face of it, does not disclose a right to relief, the High Court has undoubtedly power to dismiss it in limine. If there be other grounds, which appear to the High Court to be adequate such as delay or acquiescence, existence of an adequate alternative remedy, which is equally efficacious, or failure to disclose all material facts, which have a bearing on the question of misrepresentation of facts, jurisdiction of the High Court to dismiss a petition in limine cannot be denied. An attempt to short-circuit the procedure provided by the Indian Income-tax Act for investigation of facts, which the Income-tax Officer alone is competent to investigate in the first instance may also justify the High Court in rejecting a petition for the issue of a writ under Article 226. But where, as in the present case, the claim made is that the Income-tax Officer had no power to issue the notice under Section 34, and that the power is exercised not for any legitimate purpose for which it may be used, but for the purpose of making a fishing enquiry and to review a previous order passed in favour of the company, a rule upon the Income-tax Officer to show cause why the order should not be set aside and an opportunity to the authority whose action was challenged either to accept or deny the facts alleged and to set out such other material facts as have a bearing on the question, was at least called for."

The other three decisions relied upon by learned counsel for the appellant have no bearing on the point in this appeal.

In the instant case, the very prayer made in the writ petition would suggest that it be declared that the land in question is not assigned land and the petitioner was not put in possession under Act 9 of 1977 and the Rules made thereunder; for that reason, to declare the action of Mandal Revenue Officer in issuing the impugned notice under Section 3 of the Act is illegal, arbitrary and without jurisdiction and not to interfere with his and his son's enjoyment of the land. In other words, petitioner is praying the Court to declare that the land is not assigned land. Learned single Judge also noticed that the petitioner has not placed any evidence in support of his pleadings excepting the *ipse dixit* of the petitioner.

In such like matters when it is not shown that the very show cause notice, on the face of it, is without jurisdiction, there cannot be any

interference in exercise of extra-ordinary jurisdiction and parties must be relegated to appear before the concerned authority, submit their reply and invite decision thereon. It is not the case of the petitioner-appellant that Mandal Revenue Officer cannot exercise jurisdiction and give such notice, in case the land is an assigned land. Learned counsel for the petitioner-appellant invites our decision that we should come to the conclusion that it is not assigned land and it is patta land. For that, he says we must look into some material, which was not the material before the Mandal Revenue Officer. He would like us to adjudicate the facts, which might be disputed or might not be disputed. But the prime question is that assuming what is alleged in the notice to be correct, Mandal Revenue Officer has jurisdiction to issue such a notice. Therefore, the right course, in such cases, is to relegate the petitioner-appellant to appear before the authority. In case, petitioner-appellant feels that there is prejudice in the mind of Mandal Revenue Officer and that he would not render justice, appellant-petitioner is not remediless. The decision of Mandal Revenue Officer is subject to statutory appeal and revision. The order of the appellate/revisional authority is subject to judicial review under Article 226 of the Constitution. At the most, we can give some protection to the petitioner till orders are passed pursuant to the show cause notice and till such period the petitioner-appellant takes up the matter in appeal before the appellate authority, if Mandal Revenue Officer passes order against the appellant.

Consequently, we dispose of this Writ Appeal by setting aside the order of the learned single Judge and dismissing the writ petition with liberty reserved to the petitioner-appellant to submit reply to the show cause notice and raise various contentions raised in this writ petition and produce whatever material or evidence the appellant would like to produce before the Mandal Revenue Officer. The Mandal revenue Officer, of course, will proceed to take up and deal them in accordance with law. In case, the petitioner-appellant would aggrieve by the Order to be passed by the Mandal Revenue Officer, appellant is at liberty to

challenge the same as per the provisions of Act 9 of 1977. Till the same is taken by Mandal Revenue Officer and in case the decision of the Mandal Revenue Officer is against the appellant, for a period he would like to file appeal against such order, it is directed that there shall not be any interference with the possession of the land in question. Further, petitioner-appellant shall not also change the nature of the property or create any third party interest.

Though it is stated that pursuant to the direction of the learned single Judge reply has already been filed to the show cause cause, in the light of what is stated in our order, learned counsel for the appellant would like to supplement that reply, which may be filed within a period of one month from today.

(DEVINDER GUPTA, CJ)

23rd September,2004

(C.V. RAMULU,J)

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DEPUTY REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Mandal Revenue Officer, Bommalaramaram Mandal, Nalgonda District.
2 The Revenue Divisional Officer, Bhongir, Nalgonda District.
3 2 CCs to Govt Pleader for Revenue, High Court Buildings, Hyderabad (OUT)
4 2 CD copies.

[1] (1965) 56 ITR (Sh.N.) 637

[2] AIR 1968 SC 1186

[3] AIR 1973 SC 1362

[4] AIR 1987 SC 1628